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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

KATE KOELLER, JEFF KOELLER, and
MATT DAVIDSON,

Plaintiffs,

vs.

NIXPLAY, INC., CREEDON
TECHNOLOGIES USA, LLC, and DOES 1
to 20,

Defendants.

Case No.: 25CV464129

COMPLAINT FOR:


















1. Violations of the California Consumer Legal Remedies Act
2. Violations of California's False Advertising Law
3. Violations of California's Unfair Competition Law
4. Breach of Contract

JURY TRIAL DEMANDED

1 Plaintiffs Kate Koeller, Jeff Koeller, and Matt Davidson (“Plaintiffs”) bring this action against
2 Defendants Nixplay, Inc. and Creedon Technologies USA, LLC (“Defendants” or “Nixplay”). Upon
3 personal knowledge as to their own acts and status and upon information and belief as to all other
4 matters, Plaintiffs allege the following:

5 INTRODUCTION

6 1. This case concerns Nixplay’s bait-and-switch advertising of its digital photo frames.
7 For years, Nixplay promised customers unlimited photo cloud storage and five gigabytes of video
8 cloud storage—including with the purchase of a digital photo frame. Indeed, Nixplay advertised cloud
9 storage as one of the main features included with its frames with “no subscription necessary”:¹

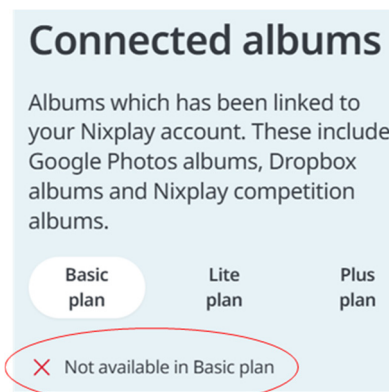
How we compare		
We compared our flagship model against the competition. Why? Because we believe Nixplay offers the best price and features of any digital photo frame on the market. We constantly invest in the development of new features and upgrades to make your experience better, plus there's no subscription necessary!		
Nixplay	Skylight	Aura
		
Classic Matte (W10P) \$123.99 \$189.99	Black \$159.99	Carver Mat \$179.00
Summary		
Display 10.1" (1280x800)	Display 10.1" (1280x800)	Display 10.1" (1280x800)
Aspect Ratio 16:10	Aspect Ratio 16:10	Aspect Ratio 16:10
 Dual orientation (Auto rotate photos based on orientation)	 Landscape orientation only	 Landscape orientation only
 AI face framing 	 No	 No
 Touch screen	 Touch screen	 No
 Unlimited photo cloud storage 5GB video cloud storage (with frame Storage)	 No cloud storage  (only has frame Storage)	 Unlimited cloud storage (with frame Storage)

25 2. Plaintiffs purchased and used Nixplay frames with the expectation they would be able
26 to display their photos and videos on their digital frames without paying an additional subscription

27
28 ¹ Source: <https://web.archive.org/web/20240911194525/https://www.nixplay.com/pages/competitor-comparison-table>.

1 fee. And for the first five years of their ownership, Nixplay upheld its promise.

2 3. In March 2025, however, Nixplay chose to place profits over promises. Nixplay
3 announced it would be making “updates” to its free Standard plan. Standard users who previously
4 enjoyed unlimited photo storage and 5 GB of video storage would be downgraded to a “Basic Plan,”
5 capped at just 0.5 GB of photo storage and 0.5 GB of video storage. Any content exceeding those
6 limits would be restricted and no longer viewable on users’ frames unless they agreed to pay a newly
7 imposed subscription fee. As an additional “update,” Nixplay announced it was eliminating the ability
8 for users to link their Google Photos and Dropbox albums—a feature Nixplay had promised would
9 be included with its frames at no additional cost and without requiring a subscription:²



17 4. Nixplay claims these changes were necessary due to “rising storage and bandwidth
18 costs.”³ That justification, however, is belied by Nixplay’s simultaneous assurance that it will continue
19 to store users’ restricted content “indefinitely.”⁴ Instead of reducing storage costs by deleting user
20 content, Nixplay is simply restricting use of it unless users pay the newly imposed subscription fees.
21 Plaintiffs and countless other consumers purchased Nixplay frames and are Standard users who relied
22 on Nixplay’s promises they would be able to display their photos and videos on their frames without
23 paying additional subscription fees. For years, Nixplay honored its promise, and users uploaded
24 millions of photos and videos to Nixplay’s cloud storage.

25
26 ² Source: <https://www.nixplay.com/pages/albums>.

27 ³ Source: <https://www.nixplay.ca/blogs/legal-policy-documents/important-update-from-nixplay-ceo-2025-changes-to-your-services-a>.

28 ⁴ Source: <https://www.nixplay.com/blogs/faq/how-long-will-my-locked-content-be-retained-if-i-don-t-upgrade-my-subscription>.

5. But according to the “update,” a significant portion of user-uploaded content would be locked and unusable as of April 21, 2025—the very same content that users could previously view on their Nixplay frames without a subscription and at no additional charge.⁵

6. Through this action, Plaintiffs seek public injunctive relief under California’s consumer protection laws on behalf of the general public, including Nixplay’s approximately 3.5 million users.⁶ Plaintiffs seek an injunction requiring Nixplay to unlock the photos and videos users previously uploaded to Nixplay’s cloud storage and honor the promises it made regarding the features included with its digital photo frames. Plaintiffs further seek an order prohibiting Nixplay from removing or restricting those features from their devices in the future.

THE PARTIES

7. Plaintiff Kate Koeller (“Kate Koeller”) is an individual residing in the State of Illinois.

8. Plaintiff Jeff Koeller (“Jeff Koeller,” and together with Plaintiff Kate Koeller, the “Koellers”) is an individual residing in the State of Illinois.

9. Plaintiff Matt Davidson (“Davidson”) is an individual residing in the State of California.

10. Defendant Nixplay, Inc. (“Nixplay Inc.”) is a Delaware corporation, with its principal executive offices at 1312 17th Street #389, Denver, CO 80202. Nixplay Inc. owns a 73.77% interest in Nixplay (previously “Creedon Technologies Holding Limited”), a private company incorporated in the Cayman Islands, which owns a 100% interest in Creedon Technologies HK Limited, a limited company incorporated in Hong Kong, which owns a 100% interest in Defendant Creedon Technologies USA, LLC.⁷

11. Defendant Creedon Technologies USA, LLC (“Creedon Technologies USA”) is a Minnesota Limited Liability Company doing business as Nixplay, with its registered office address at 505 Highway 169 N, Suite 350, Minneapolis, MN 55441, and its principal executive office address at 1312 17th Street #389, Denver, CO 80202. Creedon Technologies USA provides management

⁵ Source: <https://www.nixplay.com/blogs/faq/my-content-is-locked-what-does-that-mean>.

⁶ Source: https://www.sec.gov/Archives/edgar/data/1946957/000168316824002773/nixplay_1k-123123.htm.

⁷ Source: https://www.sec.gov/Archives/edgar/data/1946957/000168316823001615/nixplay_253g2.htm.

1 services to Nixplay Inc., is the direct employer of Nixplay Inc.’s executive officers, and conducts
2 U.S. sales activities for Nixplay Inc.⁸

3 12. The true names and capacities of the Defendants sued herein as DOES 1 to 20 are not
4 known to Plaintiffs, who therefore sue these Defendants by fictitious names. Plaintiffs are informed
5 and believe and thereon allege that each of the fictitiously named Defendants is responsible in some
6 manner for the occurrences alleged herein. Plaintiffs will seek leave of Court to amend this Complaint
7 and serve such fictitiously named Defendants once their names and capacities become known.

8 **JURISDICTION AND VENUE**

9 13. This Court has subject matter jurisdiction over this action pursuant to Article VI,
10 section 10 of the California Constitution and Code of Civil Procedure sections 410.10 and 85 et seq.,
11 because the claims asserted fall within the Court’s general jurisdiction, and the value of the injunctive
12 relief sought by Plaintiffs exceeds the jurisdictional minimum for unlimited civil cases. An actual
13 controversy exists for purposes of issuing injunctive relief.

14 14. California has jurisdiction over this dispute because Nixplay’s Terms of Service
15 include a forum selection clause wherein Nixplay freely and voluntarily agreed “to submit to the
16 personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara
17 County, California.”⁹ California has a logical nexus to the dispute, which, according to Nixplay’s
18 Terms of Service, “shall be governed by the laws of the State of California without regard to conflict
19 of law principles,” and to Plaintiff Davidson, a resident of California. Furthermore, Nixplay has
20 sufficient minimum contacts with California, having intentionally availed itself of the California
21 marketplace through the promotion, marketing, and sale of digital photo frames to California
22 consumers, such as Plaintiff Davidson, so as to render the exercise of jurisdiction by this Court
23 permissible under traditional notions of fair play and substantial justice.

24 15. Venue is proper in the County of Santa Clara because Nixplay’s Terms of Service
25 provide that the state and federal courts located within Santa Clara County shall have exclusive
26 jurisdiction over this dispute.

27 ⁸ *Id.*

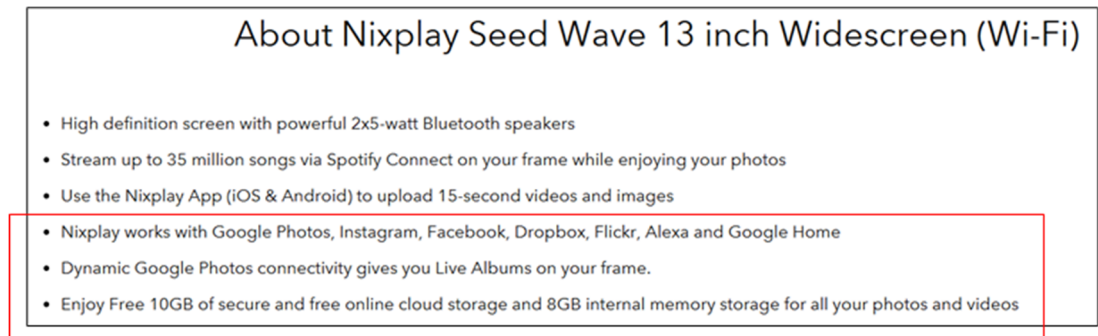
28 ⁹ Source: <https://www.nixplay.com/pages/terms-of-service>; <https://www.nixplay.com/blogs/content/terms-of-service-change-march-2025>.

FACTUAL ALLEGATIONS

16. Nixplay was started in 2007 by founder and CEO Mark Palfreeman. Nixplay sells the global number-one selling digital photo frame and has sold over 2.5 million digital photo frames to over 2.2 million customers.¹⁰ The company generated revenues of over \$30 million in 2022, and over \$20 million in 2023.¹¹

17. Nixplay digital photo frames are devices designed to display digital photos and videos. To use the frames, users must upload their content to Nixplay's cloud servers or link their Google Photos or Dropbox albums to their Nixplay account. Once uploaded or linked, the content can be displayed on the user's digital photo frame. The frames connect to the internet via Wi-Fi and sync with the user's Nixplay account to display updated photos and videos. Content can only be displayed on the frames after it is uploaded to or linked through a user's Nixplay account.

18. In 2019 and 2020, when Plaintiffs purchased their digital photo frames, Nixplay advertised that "10 GB of secure and free online cloud storage" was included with the purchase of a frame, along with integration with Google Photos and Dropbox, as shown in the screenshots taken of its website below:¹²



19. Nixplay subsequently *increased* the free cloud storage available to users, including Plaintiffs, to unlimited photo storage and 5 GB of video storage, with no subscription necessary. Nixplay referred to its free subscription-less plan as its "Standard" plan, as shown in the screenshot taken of its website below:¹³

¹⁰ Source: <https://www.nixplay.com/pages/why-choose-nixplay>.

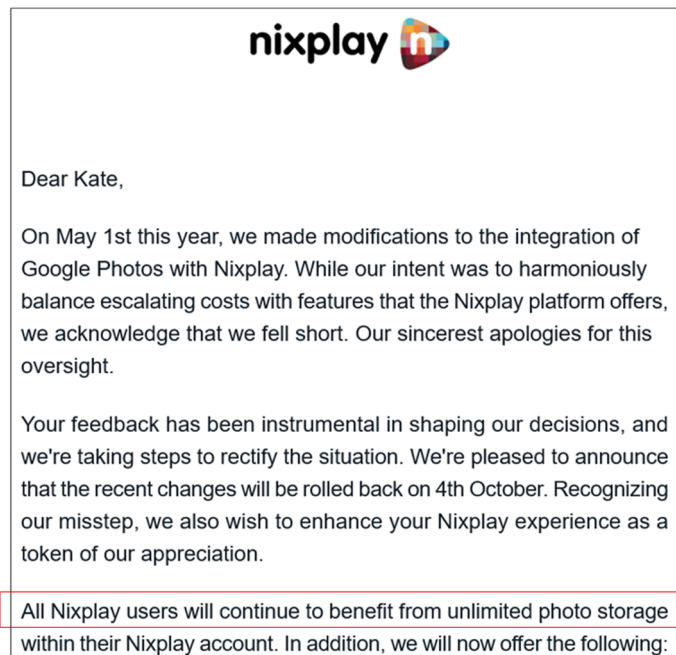
¹¹ Source: https://www.sec.gov/Archives/edgar/data/1946957/000168316824002773/nixplay_1k-123123.htm.

¹² Source: <https://web.archive.org/web/20200808003609/https://www.nixplay.com/products/nixplay-seed-wave-wi-fi-cloud-frame-13-inch-widescreen>.

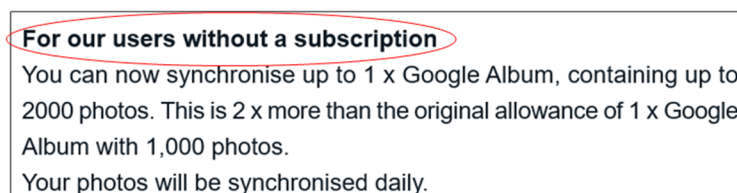
¹³ Source: https://web.archive.org/web/20230223222138mp_/https://www.nixplay.com/collections/nixplay-plus.

	plus Members	Standard
	From \$4.99/month *Cancel anytime	Free
Frame Discount	25%	---
Print Shop Discount	Up to 80%	Up to 20%
Replacement Warranty	Lifetime	1 year
Video Duration	2 mins.	15 sec.
No. of Shared Playlists	Unlimited	5
Cloud Storage	Photo - Unlimited Video - 50GB	Photo - Unlimited Video - 5GB
In-app Photo Editing	Yes	---
Exclusive Frames	Yes	---
Connect Frames	Up to 10	Up to 5
Customer Support	Priority Support	Mon - Fri

















20. Nixplay memorialized its promise of unlimited photo storage in an email it sent to users on or about September 27, 2023, as shown below:



21. In that same email, Nixplay also memorialized its promise that integration with Google Photos was included “without a subscription.”



22. Indeed, as recently as December 14, 2024, Nixplay set itself apart from competitors by advertising that its digital photo frames included unlimited photo cloud storage, 5 GB of video cloud storage, and integration with Google Photos and Dropbox with “no subscription necessary”:¹⁴

How we compare		
We compared our flagship model against the competition. Why? Because we believe Nixplay offers the best price and features of any digital photo frame on the market. We constantly invest in the development of new features and upgrades to make your experience better - plus there's no subscription necessary!		
Nixplay	Skylight	Aura
		
Classic Matte (W10P)	Black	Carver Mat
\$149.99 \$189.99	\$159.99	\$179.00
Summary		
Display 10.1" (1280x800)	Display 10.1" (1280x800)	Display 10.1" (1280x800)
Aspect Ratio 16:10	Aspect Ratio 16:10	Aspect Ratio 16:10
 Dual orientation (Auto rotate photos based on orientation)	 Landscape orientation only	 Landscape orientation only
 AI face framing	✗ No	✗ No
 Touch screen	 Touch screen	✗ No
 Unlimited photo cloud storage 5GB video cloud storage (with frame Storage)	✗ No cloud storage (only has frame Storage)	 Unlimited cloud storage (with frame Storage)
Features		
 Mobile, web app, email photo upload	 Mobile & email photo upload	 Mobile app photo upload
 Social media photos upload (Google Photos, Dropbox, Instagram, Flickr)	✗ No	 Social media photos upload (Google Photo)

¹⁴ See <https://web.archive.org/web/20241214064822/https://www.nixplay.com/pages/competitor-comparison-table> (last visited Apr. 17, 2025).

23. But in March 2025, Nixplay announced that starting on April 21, 2025, it would be retiring its free “Standard” plan and moving users to a new free “Basic” plan. However, whereas the free Standard plan had included unlimited photo storage and 5 GB of video storage, the free Basic plan would offer just 0.5 GB of photo storage and 0.5 GB of video storage—a fraction of the storage Nixplay had advertised. Nixplay also removed integration with Google Photos and Dropbox from the free plan, forcing users who wished to continue using those features to purchase a paid subscription.

24. Following the announcement, Nixplay received well over 100 one-star reviews on Amazon.com criticizing its bait-and-switch advertising practices. A sampling of those reviews are excerpted below:



Nate



Do not buy!! Bait and Switch. Promised unlimited storage only to be made to pay a subscription fee.

Reviewed in the United States on April 8, 2025

Size: 10 inch (Classic Black)

Bait and switch on their customers. Hope you're ready to pay a surprise subscription fee for this. Corporate greed at its finest. Will be talking with my family and friends to return our devices.



georgette



Don't buy

Reviewed in the United States on April 8, 2025

Size: 10 inch (Classic Black)

Unless you pay a newly instituted annual subscription fee, your photos will be locked out. Yup....the frame you paid for, your photos that you took the time to send to frame will NOT BE AVAILABLE to you - ever. It was a great product when I bought years ago when they promised unlimited storage.



Eric Vin



Expensive Paperweight after Update

Reviewed in the United States on April 14, 2025

Verified Purchase

With the new updates removing included free functionality this has turned into a very expensive paperweight unless you're willing to pay a monthly subscription. Absolutely scummy behavior from this company.



Matt M



Bait and Switch

Reviewed in the United States on April 14, 2025

Size: 10 inch (Classic Black)

Bait and switch. Previously free, advertised features are now locked behind a monthly subscription.



AUser



Dishonest company

Reviewed in the United States on April 17, 2025

Size: 10 inch (Black) | **Verified Purchase**

I purchased two of these and also a couple other variations, for ourselves and for gifts. We spent almost \$1000. Nixplay offered free cloud storage for life as part of the purchase. That's why we went with them. The frames were very expensive. Now they dishonestly changed the terms, and want me to pay a huge yearly fee. The frame is basically unusable without paying (the free plan is only 500MB total of pictures). This shows very poor character, and I've lost faith in this company. DO NOT BUY NIXPLAY!



Lori H



SHADY COMPANY! - Find another brand!

Reviewed in the United States on April 18, 2025

Size: 10 inch (Classic Black) | **Verified Purchase**

I, like thousands of others, bought these frames because they boasted unlimited photo storage! That was the HUGE perk to Nixplay over other (and much more affordable) digital frames. And now Nixplay has taken that away, and put all the good features (that were included with the frame when I bought it...) behind a subscription paywall. A DISGUSTING tactic and cheap money grab from loyal customers.

I would rather spend more on another frame than support a company that turns their back on THOUSANDS of loyal customers. Nixplay, is a DISGRACE!



Amazon Customer



Bait And Switch - Stay Away

Reviewed in the United States on April 20, 2025

Size: 13 inch widescreen

The frame worked great for many years. I bought this frame at a premium price over other similar frames because Nixplay advertised a subscription free service that allowed you to integrate with your Google photo account. They advertised that they would not require a subscription. Fast forward multiple years and Nixplay is now requiring a subscription to continue use accessing your Google photo account. The frame is becoming practically unusable without the subscription.

Do not buy products from Nixplay. They pulled a bait and switch and cannot be trusted.

1 **PLAINTIFFS' PURCHASES**

2 **The Koellers**

3 25. On or about January 26, 2020, the Koellers purchased a Nixplay Seed Wave 13 inch
4 Widescreen (Wi-Fi) digital photo frame on Nixplay's website. Jeff Koeller relied on Nixplay's
5 representations regarding the included cloud storage and gifted the frame to his wife Kate Koeller.

6 26. On or about February 3, 2020, Kate Koeller decided to keep the frame and created a
7 Nixplay account, relying on Nixplay's representations regarding cloud storage. Thereafter, Kate
8 Koeller uploaded numerous photos to her Nixplay cloud storage.

9 27. On or about September 27, 2023, Kate Koeller received an email from Nixplay
10 confirming that "All Nixplay users will continue to benefit from unlimited photo storage within their
11 Nixplay account." The email further confirmed that she could synchronize one Google Album,
12 containing up to 2000 photos, without a subscription, for use on her Nixplay frame.

13 28. On or about March 12, 2025, Kate Koeller received an email from Nixplay indicating
14 that her free "Standard" plan would be automatically converted to a free "Basic" plan. The email
15 stated:

16 You are currently enjoying a Nixplay Standard plan. On April 21st you will be
17 automatically migrated to a free Nixplay Basic plan at no cost to you.

18 Your current usage exceeds the limits of your new Nixplay Basic plan. Where your
19 usage exceeds your plan limits, on April 21st some content will be restricted from
20 sharing or viewing on a frame without editing your content or upgrading your
21 subscription.

22 29. On or about March 12, 2025, Kate Koeller received another email from Nixplay
23 stating that her free Standard plan "is being retired, and existing users will be moved to Nixplay Basic
24 on April 21st, 2025."

25 30. On or about April 14, 2025, Kate Koeller received another email from Nixplay stating
26 that her current "plan usage exceeds [her] new plan limits" and that "On April 21st some content will
27 be restricted from sharing or viewing on a frame without editing [her] content or upgrading [her]
28 subscription." Specifically, the email indicated that her photo storage was 3.377 GB over the new plan
limit of 0.5 GB and that to continue using her content, she would need to upgrade to a paid subscription.

1 **Davidson**

2 31. On or about May 16, 2019, Davidson purchased three Nixplay Seed 10.1” digital photo
3 frames from Amazon.com. On or about August 28, 2019, Davidson purchased an additional Nixplay
4 Seed 10.1” widescreen digital photo frame from Nixplay’s website. Davidson relied on Nixplay’s
5 representations regarding the cloud storage that was included with the frame. Davidson created a
6 Nixplay account and uploaded numerous photos and videos to his Nixplay cloud storage.

7 32. On or about September 27, 2023, Davidson received an email from Nixplay
8 confirming that “All Nixplay users will continue to benefit from unlimited photo storage within their
9 Nixplay account.” The email further confirmed that he could synchronize one Google Album,
10 containing up to 2000 photos, without a subscription, for use on his Nixplay frame.

11 33. On or about March 11, 2025, Davidson received an email from Nixplay indicating that
12 his free “Standard” plan would be automatically converted to a free “Basic” plan. The email stated:

13 You are currently enjoying a Nixplay Standard plan. On April 21st you will be
14 automatically migrated to a free Nixplay Basic plan at no cost to you.

15 Your current usage exceeds the limits of your new Nixplay Basic plan. Where your
16 usage exceeds your plan limits, on April 21st some content will be restricted from
17 sharing or viewing on a frame without editing your content or upgrading your
18 subscription.

19 34. On or about March 11, 2025, Davidson received another email from Nixplay stating
20 that his free Standard plan “is being retired, and existing users will be moved to Nixplay Basic on
21 April 21st, 2025.”

22 35. On or about April 14, 2025, Davidson received another email from Nixplay stating
23 that his current “plan usage exceeds [his] new plan limits” and that “On April 21st some content will
24 be restricted from sharing or viewing on a frame without editing [his] content or upgrading [his]
25 subscription.” Specifically, the email indicated that his photo storage was 3.265 GB over the new
26 plan limit of 0.5 GB and his video storage was 0.08 GB over, and that to continue using his content,
27 he would need to upgrade to a paid subscription.

28 **ONGOING HARM**

36. Plaintiffs seek public injunctive relief to prohibit Nixplay from continuing to engage
in the unlawful and unfair acts and practices alleged herein—namely restricting the use of photos and

1 videos uploaded to Nixplay's cloud storage and removing promised features from users' devices after
2 purchase.

3 37. Among the features Nixplay advertised were specific storage limits for photos and
4 videos and the integration of Google Photos and Dropbox. Plaintiffs and members of the general
5 public reasonably relied upon Nixplay's advertising when deciding to purchase Nixplay frames.

6 38. Nixplay's wrongful removal of advertised features threatens to leave Plaintiffs and
7 countless consumers unable to view millions of their photos and videos on their Nixplay frames.
8 Nixplay now requires users to pay ongoing subscription fees to view such content—a feature that
9 Nixplay had advertised as included with their frames without a subscription.

10 39. Moreover, the newly imposed subscription fees are indefinite in duration, subject to
11 unilateral increases by Nixplay, and not tied to any fixed term or capped amount. As a result, it is
12 impossible to calculate the full extent of harm, as users will be forced to pay ever-increasing fees
13 over an indefinite period simply to use the features Nixplay had promised would be included with
14 their frames without a subscription.

15 40. Accordingly, Plaintiffs seek public injunctive relief on behalf of the general public
16 compelling Nixplay to restore the features it promised were included with its digital photo frames,
17 prohibiting Nixplay from removing or restricting those features in the future, and enjoining Nixplay
18 from advertising digital photo frames with specified features unless it intends to include those features
19 for the life of the devices. Because the requested injunctive relief would benefit the public at large, it
20 is properly sought under California law, including under the standards set forth in *McGill v. Citibank*,
21 *N.A.* (2017) 2 Cal. 5th 945.

22 41. On April 14, 2025, Plaintiff Kate Koeller emailed Nixplay to complain about the
23 removal of features from her Nixplay frame. On April 17, 2025, Nixplay responded but refused to
24 preserve those features without requiring a paid subscription, contrary to what it had originally
25 advertised. Without an injunction ordering Nixplay to unlock users' restricted content and honor its
26 promises regarding the features included with its frames, there remains a real and immediate threat
27 that Plaintiffs and hundreds of thousands, if not millions of consumers, will suffer harm now and in
28 the future.

FIRST CAUSE OF ACTION
Violation of California's Consumer Legal Remedies Act ("CLRA")
Civ. Code §§ 1750, et seq.

42. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

43. Defendants are "persons" as defined by Civil Code section 1761(c).

44. Plaintiffs are "consumers" within the meaning of Civil Code section 1761(d).

45. Plaintiffs engaged in "transactions" with Defendants as that term is defined by Civil Code section 1761(e).

46. As alleged herein, Nixplay violated the CLRA in the following manners:

a. Section 1770(a)(5) – by representing that Nixplay digital photo frames have benefits which they do not have;

b. Section 1770(a)(9) – by advertising its digital photo frames with an intent not to sell them as advertised;

c. Section 1770(a)(10) – by advertising digital photo frames with an intent not to supply them with sufficient cloud storage to reasonably satisfy the expected demand;

d. Section 1770(a)(14) – by representing that purchases of its digital photo frames conferred rights as to features that Nixplay subsequently removed;

e. Section 1770(a)(16) – by representing that its digital photo frames were supplied with features that Nixplay subsequently removed; and

f. Section 1770(a)(29)(A) – by advertising, displaying, and offering prices for its digital photo frames that did not include all mandatory fees or charges to use the advertised features.

47. As alleged herein, Nixplay's unfair and deceptive acts were capable of deceiving a substantial portion of the purchasing public at large.

48. Plaintiffs are reasonable consumers who expected Nixplay to provide accurate and truthful representations regarding the features of its digital photo frames.

49. Plaintiffs reasonably expected Nixplay to honor its promises regarding cloud storage. Relying on those promises, Plaintiffs uploaded photos and videos which they will not be able to view as a result of the removal of the advertised features. As a direct and proximate result of Nixplay's

1 unfair and deceptive practices, Plaintiffs have suffered and will continue to suffer actual harm.

2 50. Plaintiffs are therefore entitled to, and do, seek injunctive relief pursuant to Civil Code
3 sections 1780(a)(2) and 1780(a)(5) to enjoin and remedy Nixplay's unfair and deceptive acts and
4 practices. Specifically, Plaintiffs seek public injunctive relief on behalf of the general public
5 compelling Nixplay to restore the features it promised were included with its digital photo frames
6 and prohibiting Nixplay from removing or restricting those features in the future. Plaintiffs further
7 seek public injunctive relief enjoining Nixplay from advertising digital photo frames with specified
8 features unless it intends to include those features for the life of the devices.

9 51. In addition, Plaintiffs seek an award of attorneys' fees and court costs pursuant to Civil
10 Code section 1780(e) and all other available relief the Court deems proper.

11 **SECOND CAUSE OF ACTION**
12 **Violation of California's False Advertising Law ("FAL").**
 Bus. & Prof. Code §§ 17500, et seq.

13 52. Plaintiffs incorporate by reference each of the allegations contained in the preceding
14 paragraphs of this Complaint.

15 53. Nixplay violated, and continues to violate, Section 17500 of the Business and
16 Professions Code by disseminating untrue and misleading advertisements over the internet to
17 Plaintiffs and members of the general public.

18 54. Nixplay disseminated untrue and misleading advertisements by advertising that
19 specific features were included with its digital photo frames, as alleged herein, and then removing
20 and/or restricting those features after the frames were purchased by Plaintiffs and members of the
21 general public.

22 55. Nixplay disseminated such untrue and misleading advertisements with the intent to
23 induce Plaintiffs and members of the consumer public to purchase its products.

24 56. Nixplay knew, or by the exercise of reasonable care should have known, that the
25 specific features advertised as included with its frames, as alleged herein, would induce Plaintiffs and
26 members of the consumer public to purchase its products.

27 57. Nixplay fraudulently concealed from, and intentionally failed to disclose to Plaintiffs
28 and members of the general public that it would later remove and/or restrict these features.

58. Plaintiffs and members of the general public reasonably relied on Nixplay's representations and/or omissions made in connection with the advertised features included with its digital photo frames.

59. Nixplay's representations and/or omissions made in connection with the advertised features of its digital photo frames were likely to deceive reasonable consumers into believing such features were included with the frame by obfuscating Nixplay's later intent to remove and/or restrict such features.

60. Had Plaintiffs known that the advertised features would be removed and/or restricted by Nixplay, they would not have purchased Nixplay digital photo frames.

61. Plaintiffs bring this cause of action for public injunctive relief pursuant to Section 17535 of the California Business and Professions Code. Specifically, Plaintiffs seek public injunctive relief on behalf of the general public compelling Nixplay to restore the features it promised were included with its digital photo frames and prohibiting Nixplay from removing or restricting those features in the future. Plaintiffs further seek public injunctive relief enjoining Nixplay from advertising digital photo frames with specified features unless it intends to include those features for the life of the devices. Nixplay's violations of Section 17500 are ongoing because it continues to deprive users of key features that it advertised were included with purchase, and are likely to recur given the substantial profits derived from bait-and-switch advertising.

THIRD CAUSE OF ACTION
Violation of California’s Unfair Competition Law (“UCL”)
Bus. & Prof. Code §§ 17200, et seq.

62. Plaintiffs incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint.

63. Defendants are “persons” as defined by Business & Professions Code section 17201.

64. Nixplay has violated, and continues to violate, the “unlawful” prong of Business and Professions Code section 17200 by engaging in the following unlawful business acts and practices:

a. disseminating untrue and misleading advertisements about the features and benefits of its digital photo frames, in violation of Business & Professions Code section 17500;

b. representing that its digital photo frames have features and benefits which they

1 do not have in violation of Civil Code section 1770(a)(5);

2 c. advertising digital photo frames with intent not to sell them as advertised in
3 violation of Civil Code section 1770(a)(9);

4 d. advertising digital photo frames with an intent not to supply them with
5 sufficient cloud storage to reasonably satisfy the expected demand in violation of Civil Code section
6 1770(a)(10);

7 e. representing that the purchase of a Nixplay digital photo frame conferred rights
8 to features that Nixplay subsequently removed in violation of Civil Code section 1770(a)(14);

9 f. representing that its digital photo frames were supplied with features that
10 Nixplay subsequently removed in violation of Civil Code section 1770(a)(16); and

11 g. advertising, displaying, and offering prices for its digital photo frames that did
12 not include all mandatory fees or charges to use the advertised features in violation of Civil Code
13 section 1770(a)(29)(A).

14 65. Nixplay has violated, and continues to violate, the “fraudulent” prong of Business and
15 Professions Code section 17200 by engaging in the following unlawful business acts and practices:

16 a. making false claims about the features of its digital photo frames, such that
17 Plaintiffs and the general public were likely to be deceived; and

18 b. making false claims about the reasons for and necessity of removing and
19 restricting features it promised would be included with its digital photo frames without a subscription.

20 66. Nixplay has violated, and continues to violate, the “unfair” prong of Business and
21 Professions Code section 17200 by engaging in the following unlawful business acts and practices:

22 a. advertising and selling digital photo frames with specific features, but failing
23 to disclose those features would be unilaterally removed and restricted after purchase;

24 b. unilaterally removing and restricting key features from its digital photo frames
25 after consumers had already paid for the devices, in an effort to extract subscription fees that Nixplay
26 had expressly advertised would not be necessary;

27 c. preventing users from displaying on their devices content they already
28 uploaded to Nixplay’s cloud storage, in an effort to extract subscription fees that Nixplay had

1 expressly advertised would not be necessary;

2 d. imposing undisclosed and unilaterally-set subscription fees that Nixplay
3 expressly advertised would not be necessary to use its digital photo frames.

4 67. Nixplay's conduct, as alleged herein, has caused, and continues to cause, substantial
5 harm to Plaintiffs and the general public that is not reasonably avoidable and is not outweighed by
6 any countervailing benefits to consumers or competition. As a result of that conduct, Plaintiffs and
7 the general public have suffered injury in fact.

8 68. Plaintiffs bring this cause of action for public injunctive relief pursuant to Business &
9 Professions Code section 17203. Specifically, Plaintiffs seek public injunctive relief on behalf of the
10 general public (a) compelling Nixplay to restore the features it promised were included with its digital
11 photo frames, (b) prohibiting Nixplay from removing or restricting those features in the future, (c)
12 enjoining Nixplay from preventing users from displaying on their devices photos and videos they
13 have already uploaded to Nixplay's cloud storage, and (d) enjoining Nixplay from advertising digital
14 photo frames with specified features unless it intends to include those features for the life of the
15 devices. Nixplay's violations of Section 17200 are ongoing because it continues to deprive users of
16 the specific features it advertised were included with its frames and it continues to prevent users from
17 displaying on their devices content they have already uploaded to Nixplay's cloud storage. Moreover,
18 Nixplay's violations of Section 17200 are likely to recur given the substantial profits derived from
19 bait-and-switch advertising.

20 **FOURTH CAUSE OF ACTION**

21 **Breach of Contract**
22 **(Injunctive Relief Only)**

23 69. Plaintiffs incorporate by reference each of the allegations contained in the preceding
24 paragraphs of this Complaint.

25 70. Plaintiffs and members of the general public entered into written contracts with
26 Nixplay when they purchased digital photo frames through Nixplay's website.

27 71. As part of the contractual bargain, Plaintiffs and members of the general public agreed
28 to pay monetary consideration to Nixplay in exchange for digital photo frames with specific features
as described on Nixplay's website at the time of purchase.

72. The features Nixplay promised, including specified cloud storage limits and integration with Google Photos and Dropbox without a subscription, constituted material terms of the contracts.

73. Plaintiffs and members of the general public reasonably relied on Nixplay's representations regarding these features in deciding to purchase digital photo frames from Nixplay.

74. Plaintiffs and members of the general public fully performed their obligations under the contracts by paying Nixplay the agreed-upon purchase prices and satisfying all other conditions precedent to Nixplay's performance.

75. Nixplay breached the contracts by threatening to remove and/or removing the promised features from users' devices and conditioning the availability of those features on the purchase of a paid subscription—despite having expressly promised that no subscription would be required.

76. As a result of Nixplay's unequivocal repudiation and breach of the contracts, Plaintiffs and members of the general public have been deprived and/or will be deprived of the full benefits of their contracts, including the ability to display their photos and videos on the devices they purchased.

77. Moreover, the threatened subscription fees are indefinite in duration, subject to unilateral increase by Nixplay, and not reasonably calculable, and the intended restrictions prevent users from viewing on their devices millions of photos and videos already uploaded to Nixplay's cloud, causing ongoing and irreparable harm.

78. Accordingly, Plaintiffs seek public injunctive relief on behalf of the general public compelling Nixplay to restore the features it promised were included with its digital photo frames and prohibiting Nixplay from removing or restricting those features in the future.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request the Court order the following relief and enter judgment against Nixplay as follows:

A. Public injunctive relief, including (a) ordering Nixplay to unlock the restricted content and permit users to view their content on their Nixplay devices without a subscription; (b) ordering that Nixplay honor the promises it made regarding the features included with its digital photo frames,

1 including its promises regarding cloud storage and integration with Google Photos and Dropbox; and
2 (c) enjoining Nixplay from continuing its unlawful and unfair business practices, as alleged herein,
3 and prohibiting Nixplay from engaging in such practices in the future;

4 B. An award of attorneys' fees and costs, pursuant to Civil Code section 1780(d), Code
5 of Civil Procedure section 1021.5, or as otherwise permitted by statute; and

6 C. Such other and further relief as may be necessary or appropriate under the
7 circumstances.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby demand a trial by jury of any and all issues in this action so triable.

10
11 Respectfully submitted,

12 Dated: April 22, 2025

EDGE, A PROFESSIONAL LAW
CORPORATION

14 By: /s/ Daniel A. Rozenblatt

15 Daniel A. Rozenblatt
16 Natasha Dandavati

17 *Attorneys for Plaintiffs*
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